

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KEVIN ANTHONY CHEAVES,

Petitioner,

v.

CONNIE HORTON,

Respondent.

Case No. 2:17-CV-109

HON. GORDON J. QUIST

ORDER ADOPTING
REPORT AND RECOMMENDATION

On September 13, 2019, Magistrate Judge Maarten Vermaat issued a Report and Recommendation (R & R) recommending that the Court deny Petitioner's petition for writ of habeas corpus because it is barred by the one-year statute of limitations. The magistrate judge further recommended that the Court deny Petitioner a certificate of appealability.

Petitioner has filed Objections to the R & R, arguing that the Court has jurisdiction to review his claim. (ECF No. 14 at PageID.71.) Having conducted a de novo review of the R & R in light of Petitioner's Objections, the Court finds no reason to reject the R & R. The fact that the Court has jurisdiction has nothing to do with whether the petition is timely. Petitioner does not address the statute-of-limitations issue, which was the sole ground that the magistrate judge cited for dismissal. Accordingly, the Court will adopt the R & R as the Opinion of the Court.

Under 28 U.S.C. § 2253(c)(2), the Court must also determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Sixth Circuit has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001). Rather, the district court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Id.* Each issue must be considered

under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595 (2000). *Murphy*, 263 F.3d at 467. Therefore, the Court has considered Petitioner's claims, including his Objections, under the *Slack* standard.

Under *Slack*, 529 U.S. at 484, 120 S. Ct. at 1604, to warrant a grant of the certificate, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." For the reasons stated above, the Court finds that reasonable jurists could not find that this Court's conclusion that Petitioner's petition is untimely was debatable or wrong. Thus, the Court will deny Petitioner a certificate of appealability.

Therefore,

IT IS HEREBY ORDERED that the September 13, 2019, Report and Recommendation (ECF No. 13) is **APPROVED AND ADOPTED** as the Opinion of the Court, and Petitioner's Objections (ECF No. 14) are **OVERRULED**.

IT IS FURTHER ORDERED that Petitioner's habeas petition and amended petition (ECF Nos. 1, 12) are **DENIED** as barred by the one-year statute of limitations.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

A separate judgment will enter.

This case is **concluded**.

Dated: October 3, 2019

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE